

IN THE HIGH COURT OF JUDICATURE, ANDHRA
PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO : 11488 of 2006

Dated 1st September, 2006

Between

M.Rajasekhar Reddy

... Petitioner

and

The Chairman & Managing Director,
A.P. Tourism Department, Himayathnagar,
Hyderabad and others.

...

Respondents.

-
-

ORAL ORDER:

In this writ petition, the petitioner seeks directions by way of writ of mandamus to declare the action of the first respondent in not calling for tenders for leasing out Yathri Nivas Hotel, as illegal, and arbitrary, and, questions the action of the first respondent in seeking to grant lease in favour of the second respondent without calling for tenders in spite of the report of the Comptroller and Auditor General and the Committee on Public Undertakings as illegal and arbitrary.

The first respondent, A.P. Travel and Tourism Development Corporation, Andhra Pradesh, is a public sector

undertaking and is a State Government company, incorporated under the provisions of the Companies Act, 1956. Its main activity is to develop tourism and undertake various related projects, such as running hotels, restaurants, tours and travels etc. It owned a hotel by name 'Yatri Nivas' in the premises bearing No.1-8-180/B, situated at Sardar Patel Road, Secunderabad. The said premises consist of total area of 87 cents with a constructed plinth area of 16333 sq. ft.

The first respondent-Corporation had issued a notification in various newspapers in the year 1996 calling for tenders from interested parties to run the said hotel on lease. The second respondent had responded to the said notification and made its offer, which was accepted by the first respondent Corporation, and, an agreement was entered into between the first and second respondents initially on 11.6.1996. The said agreement was termed as Management Contract for assistance to run Yatri Nivas Complex at Sardar Patel Road, Secunderabad. The tenure of the contract is for a period of 10 years i.e. from 11.6.1996 to 10.6.2006. Subsequently, a revised agreement was entered into on 31.7.1998. The same was termed as Joint Management Contract. But, however, substantially, the terms of the Joint Management Contract were the same as that of the contract dated 11.6.1996. There was no major change in the terms and conditions of the agreement, and, even according to the revised agreement dated 31.7.1998, the period of agreement is from 11.6.1996 and up to 10.6.2006. As per the terms and conditions of the Joint Management Contract, entered into on 31.7.1998, the third respondent is permitted to renovate, expand, construct, develop, operate and manage the said Yatri Nivas in the said premises in accordance with the requirements

of the first respondent-Corporation, at the cost of second respondent. The contract provides for payment of Rs.2.00 lakhs per month apart from a deposit of Rs.12.00 lakhs (equivalent to six months compensation). With reference to the period of contract and the renewal thereof, the clauses in the Joint Management Contract, provide thus:

TENURE:

- a. The Joint Management Contract shall be for a period of 10 (ten) years, commencing from 11.6.1996, which period hereinafter be referred to as the “Initial Tenure” of the Joint Management Contract.
- b. The Joint Management Contract will come to an end on the expiry of the initial tenure or extended. Tenure, as the case may be, unless terminated earlier in accordance with the provisions contained herein.

RENEWAL:

- a. APTTDC Ltd and JMCAH shall have the option to renew the Joint Management Contract for such further period and on such terms and conditions and may be decided mutually between them and such period shall be referred to as the “Extended Tenure or Tenures” of this Joint Management Contract.
- b. The “Initial Tenure” and the extended tenure, if any, together shall form and be herein after called the “Tenure of this Joint Management Contract.”

With regard to compensation, the respondents 2 and 3 have to pay an amount equivalent to 1% share on gross turn-over for the first two years and 2% for the subsequent lease period as additional consideration besides regular compensation amount in respect of lodging and restaurant. There is a specific clause with regard to renovation, expansion and development under clause 8 of the contract and there is also a clause for terminating the contract and under clause 29 of

the agreement, any dispute or difference arising between the parties regarding the construction, obligations etc. of the parties is to be referred to an arbitrator, to be appointed by the parties in accordance with the provisions of the Indian Arbitration Act, 1996.

Though the writ petition is filed by the petitioner in his individual capacity, but, at the first instance, he has addressed a letter dated 11.5.2006 on behalf of M/s. Neela Builders and Hotels stating that the lease granted in favour of respondents 2 and 3 would be expiring by 10.6.2006 and requesting the first respondent-Corporation to issue a notification calling for fresh tenders. Subsequently, he has also addressed another letter on 1.6.2006 in the capacity of Managing Director of M/s. Mount Abu Hotels and Resorts, wherein he has offered to take the premises in question on lease for a sum of Rs.17.00 lakhs plus tax per month. On the ground that in spite of such communications by the petitioner, there was no response and respondents were taking steps to renew the lease in favour of the existing Joint Management Contract holders i.e. respondents 2 and 3, the petitioner has approached this court by way of this writ petition.

It is the case of the petitioner that there are no reasons to renew the contract in favour of respondents 2 and 3, and, with reference to award of the contract in favour of respondents 2 and 3, the Comptroller and Auditor General of India has already sent their adverse report to the first respondent-Corporation, wherein it was observed that the first respondent-Corporation has ignored the highest offer, which has offered compensation at the rate of Rs.2.34 lakhs per month, and, granted the lease in favour of 3rd respondent. It is stated in the very same report that

there was a loss of potential revenue to the tune of Rs.43.86 lakhs. It is submitted that several deviations and deficiencies detrimental to the financial interests of the Corporation were also noticed, and, in spite of the same, steps are being taken to renew the lease in favour of the petitioner.

It is submitted by the learned counsel for the petitioner, Shri M.Surender Rao, that after the expiry of the tenure of the contract in respect of Yatri Nivas, no tenders have been called for, and, the respondents are taking steps to renew the contract, in spite of the fact that there are adverse reports from the Comptroller and Auditor General against the existing contract, and, the State's largesse cannot be distributed in this arbitrary and illegal manner, which is detrimental to the interests of public revenue, and, in support of his contention, he placed reliance on the judgments of the Apex Court in the cases of **Tata Cellular v. Union of India**^[1], and, **Sterling Computers Ltd. V. M/s. M. & N. Publications Ltd.**^[2]. He further submitted the petitioner has offered a sum of Rs.17.00 lakhs per month, and, in case, the present lessee also offers the said amount, a direction be given for conducting open auction.

Separate counter affidavits have been filed by the first respondent-Corporation, and, respondents 2 and 3.

In the counter affidavit filed on behalf of the first respondent-Corporation, while disputing the locus of the petitioner to file such a writ petition, it is stated that the first respondent-Corporation has issued tender notice, and, after inviting bids entered into Management Contract for assistance to run the hotel owned by it. As the highest tenderer was not

qualified and experienced in running the restaurant and hotel, it has called the second respondent herein who quoted compensation of Rs.1.97 lakhs per month, and increased to Rs.2.00 lakhs per month during negotiations. It is stated that the agreement is only a Joint Management Contract, as the Corporation has a share on the turnover, and, forms part of the contract. While stating that the period of contract is 10 years with a clause for renewal, the third respondent has a right under the contract, to make any additions from time to time at his own cost, to carry on the works, as may be necessary, and to renovate, alter, replace any of the original buildings of the said premises with the prior approval of the first respondent-Corporation. While stating that the 3rd respondent has not committed any breach of contract as alleged by the petitioner, it is stated that the compensation was increased to Rs.2,70,000/- from 1.4.2000 and once again it was increased to Rs.3,10,000/- per month in terms of the contract. While explaining the report of the Comptroller and Auditor General, it is stated that the CAG has pointed out about the ignorance of the offer of the highest bidder. But, however, it is stated that as the highest bidder was not qualified, the offer of the second respondent was considered and negotiated. With regard to belated payments by the third respondent, it is stated that the amounts were collected with penal interest at 18% per annum and the loss of Rs.15.57 lakhs alleged in the writ petition is not with reference to the present premises. It is stated that as the 3rd respondent has made some constructions without taking approval of the drawings, the first respondent-Corporation had filed suit in O.S.No.115 of 2005 on the file of the First Additional Chief Judge, City Civil Court, Secunderabad and obtained status quo orders. In the

counter-affidavit, it is further stated that the entire compensation amount and 2% commission on gross turn-over is paid by the third respondent, and, security deposit of Rs.18,63,000/- is lying with them. Further, with reference to renewal, it is stated that the third respondent has addressed letter dated 20.5.2006 and the request of the third respondent was considered in the Board meeting held on 31.5.2006 and after assessing the pros and cons of the proposal, recommended to the Government to accord approval for renewal and decision of the Government is awaited.

In similar lines is the counter-affidavit, filed by respondents 2 and 3. While disputing the locus of the petitioner, it is stated that even the representations made on 11.5.2006 and 1.6.2006 are not on behalf of the petitioner in his individual capacity, and, as such, he has no locus standi to file the present writ petition. Further, it is stated that the contract, which is awarded in favour of respondents 2 and 3, is a Joint Managing Contract with different and distinct clauses than that of the ordinary lease. Further, it is stated that the recitals of the contract, dated 31.7.1998 contain a specific clause for renewal of Joint Management Contract. Therefore, it is not for the writ petitioner to decide about the commercial viability or profitability for extension of the contract. It is for the contracting parties to take a decision. There are no bona fides on the part of the petitioner to intervene in the matter. While disputing the assertions of the petitioner in the affidavit on the ground that they are not bona fide, it is stated that no details are given about the so-called business of the writ petitioner in real estate, hotels and resorts. While stating that these respondents have improved the property with the permission of the Corporation, by incurring an

amount of Rs.3.00 crores it is pleaded that the petitioner has no right to make any representation without there being any invitation to that effect from the first respondent-Corporation. It is stated that in the absence of any such notification, the first respondent-Corporation is not obliged to consider any representations of the petitioner allegedly made on 11.5.2006 or 1.6.2006. It is for the first respondent-Corporation to take a decision on the representation filed by the respondents seeking renewal of the lease, having regard to the nature of contract and the improvement made by constructing upper floors at their cost, and, the petitioner has no role to play in such a matter, and the writ petition filed, under the guise of public interest and public revenue, is liable to be dismissed.

Shri Nandigama Krishna Rao, learned counsel appearing for the first respondent-Corporation and Shri V.Venkataramana, learned counsel for respondents 2 and 3 submit that it is not that the contract was straight away awarded to them. Tender notice was published inviting bids and pursuant to the same respondents had applied and finding their bid viable, Joint Management Contract was entered into with them by the first respondent. As much as initially open bids were invited, it is not for the petitioner to question the same after this length of time. It is further submitted that the rights of the third respondent is pursuant an agreement entered into basing on the open invitation to run the hotel on Joint Management basis. In that view of the matter, the petitioner, at this stage, by making offers by way of writ petition cannot seek any directions. It is further submitted that there is no decision yet renewing the lease and the matter is pending before the Government. As such, the petitioner cannot seek any directions at this stage basing on the alleged report of the Comptroller and Auditor General. Learned

counsel have placed reliance on the judgments in **Centre for Public Interest Litigation v. Union of India**^[3], and, **T.N.Godavarman Thirumulpad v. Union of India**^[4].

What is deducible from the above is that at the first instance, in the year 1996, bids were invited by issuing tender notice, which was published in various newspapers. The second respondent, initially, made an offer offering compensation at the rate of Rs.1.97 lakhs per month apart from payment of specified percentage on gross turn-over, and the same was increased to Rs.2.00 lakhs per month during negotiations. Though, initially, agreement was entered into on 11.6.1996, but, subsequently, revised agreement was entered into, which was termed as Joint Management Agreement. In both the agreements, the terms and conditions substantially remained the same and even as per the terms of the agreements entered into, it is not a mere lease to run the hotel, but, there are several facets, which permit the respondents 2 and 3 to develop the project, to renovate, expand, construct, operate and manage the said place at their cost. There is a clause to make additions, constructions, renovations, but, however, there is a restriction that the designs for additions shall be approved by the first respondent Corporation. While, it is true that the period of 10 years has come to an end, but, however, there is a specific clause, which gives an option to the parties to the contract to renew the Joint Management Contract for such further period and on such terms and conditions as may be decided mutually between them.

It is stated in the counter affidavit filed by the respondents that though it is recommended by the first respondent-Corporation, but, however, the same is submitted to

Government to take further steps on the application for renewal. In that view of the matter, as on today, no decision has been taken to renew the contract in favour of respondent No.3. In the absence of any such decision to renew the contract in favour of respondent No.3 as on today, and, merely basing on the offers made by the petitioner on 11.5.2006 and 1.6.2006 there being no invitation of tenders, the petitioner has filed this writ petition. Further, it is also relevant to note, at this stage, that the petitioner has made a representation on 11.5.2006 representing M/s. Neela Buildings and Hotels, but not in his individual capacity. Even the representation dated 1.6.2006 is made in the capacity of the Managing Director of M/s Mount Abu Hotels and Resorts, and, as seen from a copy of the registration of the firm in the name of M/s. Mount Abu Hotels and Resorts, filed along with the material papers, the said firm was registered only on 6.6.2006 i.e. after the representation dated 1.6.2006. As much as initial contract was entered into after inviting open bids by publishing the tender notice in the newspapers, merely because the petitioner is offering better compensation now by way of representations, the same, by itself is no ground either to consider his claim or to call for fresh tenders. The Joint Management Contract entered into by the first respondent in favour of 3rd respondent is a concluded contract, which consists of clauses for renewal of the contract and also for resolution of the disputes by appointing arbitrators as per the provisions of the Arbitration and Conciliation Act, 1996. Though the petitioner has placed reliance on the judgment in **Tata Cellular v. Union of India (1 supra)**, wherein the Apex Court has held that the principles of judicial review would apply to exercise of contractual powers by the Government and Government bodies

in order to prevent arbitrariness or favouritism, but, as much as the initial contract was entered into after calling for open bids, and the same was not challenged at that point of time, the ratio laid down by the apex court in the above judgment is not helpful to the petitioner. Further in the case of **Sterling Computers Ltd. V. M/s. M & N Publications Ltd. (2 supra)**, relied on by the petitioner, the Honourable Supreme Court held that while exercising the power of judicial review in matters relating to contracts, court cannot act as an appellate authority and examine the details of the terms of the contract and the primary concern of the court is to see whether there is any infirmity in the decision making process. In the context of above ratio, if the facts in the instant case are considered, there is no infirmity in the decision-making process adopted by the first respondent, as tender notice was published and bids were invited, and, considering the bids offered, contract was awarded in the year 1996 followed by revised agreement in the year 1998. Further, in the case of **T.N.Godavarman Thirumulpad v. Union of India (4 supra)**, the Honourable Supreme Court has held that only a person acting bona fide alone can approach the court in public interest. Such a remedy cannot be resorted to by a person who acts on behalf of others. In this case, it is to be noted that the petitioner who filed this writ petition in his individual capacity did not even make any representation before coming to this court. In any event, making of such a representation will not have any bearing on the issue so long as the parties are covered by the concluded contract, and, further, no decision has yet been taken to renew the contract. Having regard to the nature of contract which is entered by the first respondent with third respondent as early as in the year 1996 at the first instance and revised in the year 1998, it cannot be said

that the first respondent-Corporation is taking steps to award the contract arbitrarily and illegally. Even consideration of renewal pursuant to the terms of agreement, cannot also be said that the respondents are acting arbitrarily and illegally in distributing the public largesse.

It is submitted by the learned counsel for the petitioner, Shri M.Surender Rao that when the 3rd respondent was proceeding with the constructions without approval of the plans and designs contrary to contractual terms, the first respondent itself has filed the suit in O.S. No. 115 of 2005 for injunction and obtained status quo order. It is open for the respondents, to move the court, if any deviation from the contractual terms is made by the contract holder and that alone cannot be a reason to seek directions not to renew the contract, when a provision is made in the contract itself for renewal of the same on such terms and conditions as are agreed to by both the parties. At the most, it may be a factor that can be taken into account before renewing the contract in favour of 3rd respondent. But, however, the same is also to be considered along with other relevant considerations.

Coming to the contention of the learned counsel for the petitioner that there are certain remarks against award of contract in favour of 3rd respondent in the report submitted by the Comptroller and Auditor-General and also the Committee on Public Undertakings, it is for the competent authority to take them into account while considering the request for renewal, but, the same cannot be considered, at the first instance, as a ground for issuing any directions with regard to renewal, even before the competent authority considers the aspect of renewal in terms of the contract entered into by them. As much as the

nature of the contract entered into by the first respondent in favour of 3rd respondent is a different and unique one, empowering the management contract holder i.e. the 3rd respondent to develop the project, renovate the same at its expense etc., and pursuant to the same, respondent No.3 is stated to have constructed upper floors at its cost, several factors are required to be considered before taking such decision and same can be done only by the competent authority. But, however, even before such a decision is arrived at, no direction can be issued as sought for.

In that view of the matter, I do not find any merit in this writ petition for grant of relief as prayed for. The writ petition, therefore, is dismissed. No costs.

1--9—2006

VR.

(R.SUBHASH REDDY, J.)

[\[1\]](#) AIR 1996 SC 11

[\[2\]](#) AIR 1996 SC 51

[\[3\]](#) (2000) 8 SCC 606

[\[4\]](#) (2006) 5 SCC 28